

## § 245a.10

Act (part 245a, Subpart A). In such an adjudication using this Subpart A, the district director will deem the “date of filing the application” to be the date the eligible alien establishes that he or she was “front-desked” or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply. If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under this Subpart A.

[67 FR 38350, June 4, 2002]

## Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions

SOURCE: 66 FR 29673, June 1, 2001, unless otherwise noted.

### § 245a.10 Definitions.

In this Subpart B, the terms:

*Eligible alien* means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order issued in the case of:

(1) *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS);

(2) *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC); or

(3) *Zambrano v. INS*, vacated, 509 U.S. 918 (1993) (*Zambrano*).

*Lawful Permanent Resident (LPR)* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

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*LIFE Act* means the Legal Immigration Family Equity Act and the LIFE Act Amendments of 2000.

*LIFE Legalization* means the provisions of section 1104 of the LIFE Act and section 1503 of the LIFE Act Amendments.

*Prima facie* means eligibility is established if an “eligible alien” presents a properly filed and completed Form I-485 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this Subpart B.

*Written claim for class membership* means a filing, in writing, in one of the forms listed in § 245a.14 that provides the Attorney General with notice that the applicant meets the class definition in the cases of *CSS*, *LULAC* or *Zambrano*.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38350, June 4, 2002; 67 FR 66532, Nov. 1, 2002]

### § 245a.11 Eligibility to adjust to LPR status.

An eligible alien, as defined in § 245a.10, may adjust status to LPR status under LIFE Legalization if:

(a) He or she properly files, with fee, Form I-485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending June 4, 2003.

(b) He or she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;

(c) He or she was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;

(d) He or she is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in § 245a.18, and that he or she:

(1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States;

(2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(3) Is registered or registering under the Military Selective Service Act, if

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the alien is required to be so registered; and

(e) He or she can demonstrate basic citizenship skills.

[66 FR 29673, June 1, 2001, as amended at 67 38350, June 4, 2002]

### § 245a.12 Filing and applications.

(a) *When to file.* The application period began on June 1, 2001, and ends on June 4, 2003. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I-485, with appropriate fee, to the Service during the application period as described in this section. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before June 4, 2003, to be considered timely filed.

(1) If the postmark is illegible or missing, and the application was mailed from within the United States, the Service will consider the application to be timely filed if it is *received* on or before June 9, 2003.

(2) If the postmark is illegible or missing, and the application was mailed from outside the United States, the Service will consider the application to be timely filed if it is *received* on or before June 18, 2003.

(3) If the postmark is made by other than the United States Post Office, and is filed from within the United States, the application must bear a date on or before June 4, 2003, and must be received on or before June 9, 2003.

(4) If an application filed from within the United States bears a postmark that was made by other than the United States Post Office, bears a date on or before June 4, 2003, and is received after June 9, 2003, the alien must establish:

(i) That the application was actually deposited in the mail before the last collection of the mail from the place of deposit that was postmarked by the United States Post Office June 4, 2003; and

(ii) That the delay in receiving the application was due to a delay in the transmission of the mail; and

(iii) The cause of such delay.

(5) If an application filed from within the United States bears both a postmark that was made by other than the

United States Post Office and a postmark that was made by the United States Post Office, the Service shall disregard the postmark that was made by other than the United States Post Office.

(6) If an application filed from abroad bears both a foreign postmark and a postmark that was subsequently made by the United States Post Office, the Service shall disregard the postmark that was made by the United States Post Office.

(7) In all instances, the burden of proof is on the applicant to establish timely filing of an application for LIFE Legalization.

(b) *Filing of applications in the United States.* The Service has jurisdiction over all applications for the benefits of LIFE Legalization under this Subpart B. All applications filed with the Service for the benefits of LIFE Legalization must be submitted by *mail* to the Service. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in §103.2(e) of this chapter. The Director of the Missouri Service Center shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status, unless the Director refers the applicant for a personal interview at a local Service office as provided in §245a.19.

(1) *Aliens in exclusion, deportation, or removal proceedings, or who have a pending motion to reopen or motion to reconsider.* An alien who is prima facie eligible for adjustment of status under LIFE Legalization who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board of Immigration Appeals (Board), or who is awaiting adjudication of a motion to reopen or motion to reconsider filed with the Immigration Court of the Board, may request that the proceedings be administratively closed or that the motion filed be indefinitely continued, in order to allow the alien to pursue a LIFE Legalization application with the Service. In the request to administratively close the matter or indefinitely continue the motion, the alien must include documents demonstrating prima facie eligibility for